

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF APRIL 16, 2003**

REGULAR MEETING

9:00 A.M.

APRIL 16, 2003

PRESENT:

COMMISSIONERS:	Gerald W. Smith, Chairman Jim Bagley, Vice Chairman Paul Biane Bob Colven James V. Curatalo, Alternate	Neal Hertzmann, Alternate Bill Postmus A. R. "Tony" Sedano, Alternate Diane Williams
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STAFF: **Kathleen Rollings-McDonald, Acting Executive Officer
Clark H. Alsop, Legal Counsel
Jeffrey Goldfarb, Special Legal Counsel
Debby Chamberlin, Clerk to the Commission**

ABSENT:

STAFF: **James M. Roddy, Executive Officer**

COMMISSIONERS: **Dennis Hansberger, Alternate
Richard P. Pearson**

9:00 A.M. - CONVENE MEETING OF THE LOCAL AGENCY FORMATION COMMISSION - Conference Room, LAFCO Staff Office, 175 West Fifth Street, Second Floor, San Bernardino.

CLOSED SESSION

ADJOURN TO CLOSED SESSION - Conference Room, LAFCO Staff Office

Employee Evaluation - Acting Executive Officer (Government Code Section 54957)

PUBLIC SESSION

RECONVENE MEETING OF THE LOCAL AGENCY FORMATION COMMISSION - Civic Center Hearing Chambers, 175 West Fifth Street, Second Floor, San Bernardino.

CALL TO ORDER - 9:20 A.M.

Chairman Smith calls the regular session of the Local Agency Formation Commission to order. Commissioner Sedano leads the flag salute.

Chairman Smith requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

APPROVAL OF MINUTES FOR REGULAR MEETING OF MARCH 19, 2003, AND SPECIAL MEETINGS OF MARCH 27, 2003 AND APRIL 2, 2003

Chairman Smith calls for any corrections, additions, or deletions to the three sets of minutes. There are none. Commissioner Postmus moves approval of the minutes as presented, seconded by Commissioner

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Sedano. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Postmus, Sedano, Smith, Williams. Noes: None. Abstain: None. Absent: Pearson (Sedano voting in his stead).

CONSENT ITEMS

LAFCO considers the item listed under its consent calendar, which Chairman Smith states is approval of the Executive Officer's Expense Report. Acting Executive Officer Kathleen Rollings-McDonald announces that no expense report is being submitted at this time.

CONTINUED ITEMS

REQUEST FOR RECONSIDERATION SUBMITTED BY THE REDLANDS ASSOCIATION OF THE COMMISSION'S APPROVAL OF CONFIRMATION OF EXEMPTION FROM GOVERNMENT CODE SECTION 56133 FOR WATER AND SEWER SERVICE FROM CITY OF REDLANDS IN THE DONUT HOLE AREA (CONTINUED FROM MARCH 19, 2003) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by The Redlands Association of the Commission's January confirmation of exemption from Government Code Section 56133 for water and sewer service from the City of Redlands (hereinafter referred to as "the City") in the "Donut Hole" area. This hearing is continued from March 19, 2003. Individual notice of this hearing was provided to affected and interested agencies, County departments, and those individuals requesting mailed notice.

It is noted that Legal Counsel Clark Alsop leaves the hearing at approximately 9:22 a.m. as his law firm, Best Best & Krieger, is Special Counsel to the City on unrelated matters. The Commission is represented for this item by Special Counsel Jeffrey Goldfarb of the law firm of Rutan & Tucker.

Commissioners Biane and Postmus announce that they will abstain from voting on this item, as well as the next item related to LAFCO SC#194-City of Redlands Out-of-Agency Service Contract for Fire Protection and Paramedic Services in the Donut Hole area, due to conflicts. They leave the hearing at approximately 9:22 a.m.

Acting Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald discusses the procedure for reconsideration, as outlined in the staff report. She says that on February 14, 2003, The Redlands Association submitted a request for reconsideration and that the matter, which was originally scheduled for the March hearing, was continued to the April hearing to allow for submission of additional information. She says the staff report provides an outline of the items The Redlands Association indicates warrant reconsideration, as well as the staff's responses, and she says it is up to the Commission to determine whether these factors warrant reconsideration.

Ms. McDonald says the first issue raised in the request for reconsideration is that "New facts confirm that no utility services were provided to the Donut Hole by Redlands prior to 2001." She says the request for reconsideration asserts that the formation of Community Facilities District (CFD) No. 2003-1 (Citrus Plaza) "makes clear that no utility service was provided to the undeveloped Donut Hole area by the City of Redlands prior to October of 2002." For clarification, she refers to a vicinity map attached to the staff report which shows the Donut Hole area, comprising 1,104 acres, to which the Commission's exemption from the provisions of Government Code Section 56133 applies. She points out on that map the area of the Citrus Plaza Project, which comprises 124 of the 1,104 acres within the Donut Hole. She reports that the County of San Bernardino provided an outline of CFD No. 2003-1, by a letter from Rex Hinesley, Chief Deputy County Counsel, and an e-mail from Emil Marzullo, Director of Special Districts, copies of which are

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attached to the staff report. Ms. McDonald reports that no where in the language of Government Code Section 56133(e), the subsection which provides exemptions for review of contracts outside an agency's boundaries, does it require that "previously extended service" be adequate for the anticipated or future land uses of the area. She says the Commission must only determine whether service was extended prior to that date, and she says that was determined by Finding No. 1 in Resolution No. 2765 adopted in January. She says that staff's research, as well as documents submitted by the City, including maps showing the location of infrastructure and billings for service to specific properties, show that the City provided sewer and water service to the Donut Hole prior to January 1, 2001. Ms. McDonald says that although the existence of the CFD for the Citrus Plaza development is new information, staff does not agree with the assertion that it indicates that the City did not provide service in the Donut Hole prior to January 1, 2001.

Ms. McDonald discusses the second issue, which is that the request for reconsideration asserts that "In the present case, no agreement or contract for utility services has been entered into by the City of Redlands, so any informal approval that might otherwise be available to the City under Section 56133(a) is not applicable." She reports that staff became aware of the service provision by the City through a newspaper article regarding the encroachment permit issued by the City to allow connections to the water and sewer lines already existing in the Donut Hole. She says staff began discussions with the City and then scheduled a hearing to ask that the Commission concur with the staff's position that the provision of services was exempt. She says staff believes that it was appropriate for the Commission to cautiously define the exemption from these provisions and to consider whether, and to what extent, the City's provision of service would otherwise fall within the provisions of Section 56133. She says staff believes that Section 56133(e) makes no specific reference to the requirement for a contract, but indicates that this section does not apply to an extended service that a city was providing on or before January 1, 2001.

The third issue in the request for reconsideration indicates that in a memo dated September 29, 2000, LAFCO's assistant executive officer stated: "...If the proposal meets the criteria identified in Government Code Section 56429 and the area is removed from the sphere, the City of Redlands will be unable to extend its municipal services within the area by contract with the property owners under the restrictions of Government Code Section 56133." Ms. McDonald explains that this does not specifically relate to the question of an exemption, but says it relates to Government Code Section 56133(b) as far as criteria on which a contract for service must be evaluated. She points out that the Commission has not been presented with an evaluation of a contract for service. She says the Commission has determined that the provision of service is exempt from LAFCO review, so this code section is not applicable in this case.

The fourth and fifth issues in the request for reconsideration relate to a supplemental letter received from The Redlands Association dated April 3, 2003, which includes the following assertions: "LAFCO, the City of Redlands, and Majestic Confuse the Existence of Infrastructure with the Provision of Service" and "LAFCO, the City of Redlands, and the Redlands Joint Venture Have All Previously Agreed that LAFCO's Approval is Required to Extend Utility Service to Citrus Plaza." Ms. McDonald says that staff disagrees. She says evidence has been presented that shows the City has provided both water and sewer service in the Donut Hole prior to January 1, 2001 and says staff does not believe this is a point of confusion. She explains that LAFCO SC#20 referenced in the supplemental letter was a service contract submitted by the City on behalf of the property owner, Majestic Realty. She says that at the same time, a petition was submitted by property owners requesting annexation of Citrus Plaza and that these proposals were being processed concurrently. She reports that the property owners ultimately rescinded their petition for annexation and the City withdrew the service contract. She says staff does not believe the information in that service contract from November of 1995 is compelling new evidence to warrant reconsideration.

Ms. McDonald says that responses to the request for reconsideration from the City, Redlands Joint Venture, the United Donut Hole Owners Property Association and the County are attached to the staff report and that they all indicate that service has previously been extended in this area and support the Commission's previous decision. Ms. McDonald says staff does not believe that the request for reconsideration submits any compelling new evidence or circumstances that have been overlooked or changed and says staff recommends denial of the request.

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Chairman Smith opens the hearing and calls on those wishing to speak.

Jerry Biggs of The Redlands Association presents to the Clerk a copy of his verbal presentation, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Mr. Biggs says that Attorney John Mirau, in his letter attached to the staff report dated April 1, is now attempting to use the existence of utility infrastructure in the Donut Hole to justify connecting to the City's utilities. He points out that three years ago, Mr. Mirau's client, Majestic Realty, sponsored AB 1544 to avoid paying for that existing infrastructure so that utility services could be brought in from other providers. He adds that Assemblyman Brett Granlund threatened to send State auditors into the City to disprove and discredit the City's infrastructure claims. He says one of the arguments in support of that aspect of AB 1544 was that because the existing City infrastructure had no value to Majestic's new utility provider, the City was not entitled to any compensation for its previous expenditures. Mr. Biggs discusses how the City and LAFCO have dealt over the years with extensions of service in the Mentone area and says that process shows that both the City and this Commission concur in LAFCO's jurisdiction over utility extensions in Mentone. He notes that Exhibit A to The Redlands Association's letter of April 3 lists all City applications for extensions of service to LAFCO since 1995 and says the listing shows that LAFCO's permission to extend service to these properties was requested, and granted under LAFCO's policies, in all these cases, even though water mains to service the properties already existed in the immediate area. He also notes that the City has historically provided potable water to individual residences in Mentone in the areas near the listed application sites. He points out that in at least three instances where LAFCO approval was granted, all that was needed to provide service was the installation of a lateral to connect to an existing main along the property's frontage, which he says exactly parallels the situation with the Citrus Plaza project. He says the only difference between the two situations is that the Commission has consistently exercised its jurisdiction in Mentone and has declined to do so in this situation. Mr. Biggs discusses that if the Commission accepts the definition of "existing service" proposed for the Donut Hole, there would be great expanses of territory where utility service decisions would no longer need to be brought before this Commission. He says that by comparing LAFCO's prior practice and policy with the action it has taken related to the Donut Hole, it can be argued that the Commission has decided that it has jurisdiction over the extension of utility services only when it says it does, and may abdicate its responsibilities when it chooses to. He says this calls into question whether the Commission is dealing in good faith and whether it is applying the law equally to all parties. Mr. Biggs says the Commission should rescind its previous decision.

Commissioner Bagley asks what The Redlands Association would like to see happen to this property if it is not annexed to the City for development of the Citrus Plaza. Mr. Biggs responds that it should be developed for the benefit of the City. He explains that as things are now structured, particularly related to Citrus Plaza and the partial annexation proposed, as far as he can tell, the developer has avoided paying about \$2.5 million in fees imposed by the City, in addition to \$1 million for water and sewer service. He adds that also as far as he can tell, the sales and use tax that will come from Kohl's Department Store will remain with the County and will probably remain there under revenue neutrality considerations, even if it is annexed to the City. He says the problem is that the City has the burden of having the development and supplying the infrastructure, and also has Measure U which says that in order to receive those utilities, the area must be annexed. He says those provisions have been ignored. Commissioner Bagley says his position is also that the property should be developed for the benefit of the City. He says this has turned into a very convoluted process. He asks why the Commission should reconsider its decision and throw this back into further convoluted deliberations which will cost more time and money, for what inevitably will be development on property which should be annexed to the City. Mr. Biggs responds that they are fighting about the money and who gets the benefit. He says the developer has developed in a less costly way in the County and has received the benefit of that and that the County has retained the sales tax, which he says is not the way it should be.

John Mirau, an attorney representing Redlands Joint Venture and the United Donut Hole Owners Property Association, states that for the past ten years, The Redlands Association has filed every possible appeal before every possible commission; has filed many lawsuits; and has published articles in newspapers that

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defame the owners of Redlands Joint Venture, himself, everyone involved in the project, and any public official that takes a position against The Redlands Association. He says The Redlands Association now has a string of losses in the courts and that this is about over. Mr. Mirau says that if The Redlands Association would step aside, what they want--which is development of the property, with the eventual annexation to the City and the money going to the City--will probably occur, but he says they just keep "dogging" the City and property owners every step of the way. He discusses that everyone is tired of The Redlands Association accusing them of acting in bad faith. He says the Commission made the appropriate decision on this matter and that everyone is cooperating to try to get the area developed to the benefit of the City, the County and the property owners. Mr. Mirau discusses the uniqueness of the Donut Hole and says he does not think this decision sets a precedent that would prevent the Commission from exercising its jurisdiction in cases where it makes sense, which it does not in this case.

Dan McHugh, Redlands City Attorney, states that he, the City Manager, and other City staff are present to answer any questions. Mr. McHugh says they concur with the staff report, which is accurate and excellent, and they hope that the Commission denies the request for reconsideration.

Chairman Smith asks if there is anyone else wishing to speak on this matter. There is no one and he closes the hearing. He says that in the past, people did not want to see development in this area because of losing the orange groves, but he says the issue today is money. He says he supports the staff recommendation.

Commissioner Sedano says he has been on the Commission five years, and used to be the General Manager of the South San Bernardino Water District, and is keenly aware of what is going on in the Donut Hole and the problems related to that area. He says it is time to end this. Commissioner Sedano moves approval of staff recommendation, seconded by Commissioner Bagley.

Commissioner Bagley comments that the Donut Hole has been a sad chapter in San Bernardino County history, and has brought out some of the worst in land use planning and legal maneuvers, including special legislation, which he thinks are abominable. He says Southern California is under a tremendous amount of development pressure and that this is a logical commercial extension in a growing, urbanized area. He says this should be a planning process that belongs in the City.

Commissioner Colven comments that he is still looking for what is "compelling" as far as new evidence presented by the people requesting reconsideration. He says he finds it compelling to support staff recommendation. Commissioner Williams states she agrees.

Chairman Smith calls for further discussion and there is none. He calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Sedano, Smith, Williams. Noes: None. Abstain: Biane and Postmus. Absent: Pearson (Sedano voting in his stead).

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO SC#194; AND (2) LAFCO SC#194 - CITY OF REDLANDS OUT-OF-AGENCY SERVICE CONTRACT FOR FIRE PROTECTION AND PARAMEDIC SERVICES IN THE DONUT HOLE AREA (CONTINUED FROM MARCH 19, 2003) - APPROVE STAFF RECOMMENDATION

It is noted that Legal Counsel Clark Alsop and Commissioners Biane and Postmus are absent from this hearing due to conflicts. The Commission is still represented by Special Counsel Jeffrey Goldfarb on this item.

LAFCO conducts a public hearing to consider LAFCO SC#194 - City of Redlands Out-of-Agency Service Contract for Fire Protection and Paramedic Services in the "Donut Hole" area. This hearing is continued from March 19, 2003. Individual notice of this hearing was provided to affected and interested agencies, County departments, and those individuals requesting mailed notice.

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Acting Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that the City of Redlands (hereinafter referred to as "the City") submitted a contract for Commission review signed by the County of San Bernardino, on behalf of County Service Area 38 (CSA 38), and the City, to provide fire and paramedic services in the Donut Hole. She notes that from January, 1994, to January, 2000, contracts between two public agencies were exempt from Commission review required under the provisions of Government Code Section 56133. She reports that the statute was changed, effective January 1, 2000, to exclude the exemption of contracts between public agencies, but says the Legislature noted that there could be instances where the exemption would remain appropriate. She says staff believes the exemption in Section 56133, subsection (e) exempts this contract from LAFCO review based on the four findings listed on page two of the staff report. Ms. McDonald explains that in 1992, the City and CSA 38, then administered by the California Division of Forestry, entered into a service agreement to provide the exact level of service within the area of the Donut Hole and the other then existing island of the Mountain View Power site. She says that contract was not renewed in 1997. She says the service delivery requested by the contract today is the same level of service contemplated in 1992 and the same level of service contemplated in East Valley Corridor Specific Plan (EVCSP) adopted in 1989. She says the EVCSP required the development of various master plans for the area, to be funded by CSA 110, which overlays the Donut Hole and areas within the Cities of Redlands and Loma Linda, and that the master plans anticipate that the full range of fire protection and medical aid services would be provided. Ms. McDonald says staff believes that the contract allows for the receipt of the level of service contemplated by these agencies and that the staff recommendation is that the Commission determine that LAFCO SC#194 is exempt from the provisions of Government Code Section 56133, as outlined in Subsection (e).

Chairman Smith opens the public hearing and asks if there is anyone wishing to speak.

Mel Enslow, Fire Chief for the City of Redlands, says he agrees with staff recommendation and thanks staff for their work.

Chairman Smith asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Sedano moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Sedano, Smith, Williams. Noes: None. Abstain: Biane and Postmus. Absent: Pearson (Sedano voting in his stead).

It is noted that Commissioners Biane and Postmus and Legal Counsel Clark Alsop return to the hearing, and Special Counsel Jeffrey Goldfarb leaves the hearing, at approximately 9:55 a.m.

DISCUSSION ITEMS

PRELIMINARY REVIEW OF BUDGET MATTERS FOR FISCAL YEAR 2003-2004: (A) REVIEW OF PROPOSED FEE SCHEDULE AND (B) REVIEW OF PROPOSED BUDGET - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to review budget matters for Fiscal Year 2003-04. Notice of this hearing has been advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, all cities and independent special districts, the County, and those individuals requesting mailed notice.

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Acting Executive Officer Kathleen Rollings-McDonald presents the staff reports, and a copy of each is on file in the LAFCO office and is made a part of the record by reference herein. Ms. McDonald states that Item 5A relates to the Fee Schedule, which proposes the following three minor modifications: (1) a clarification of the out-of-agency service contract provisions where a \$2,000 charge will apply; (2) a new charge (\$25) for filing a Notice of Exemption with the County Clerk of the Board of Supervisors; and (3) a change under Miscellaneous Charges to show that there will be a reproduction fee charged after ten copies rather than five copies.

Ms. McDonald discusses Item 5B, the proposed budget. She says with the impacts of the State's budget crisis unknown, staff has attempted to: (1) maintain funding for programs and services provided by the Commission; and (2) reduce costs wherever possible. She says the salary and benefit categories include the payment of the 3% cost-of-living increase effective July 1, 2003, and include the anticipated accrual of one full pay period for the upcoming fiscal year and the payment of contract benefit amounts. She says staff proposes the maintenance of current levels of support to activities begun in prior years, such as website activities and the maintenance of city/district digitized maps, and proposes the elimination of costs for "MetroScan" since the County intranet provides access to parcel maps and landowner data. Ms. McDonald reports that the overall proposed budget provides for a reduction in costs of approximately 5.3% from last year, for a total of \$666,813 (\$621,982 in total expenses and \$44,831 in reserves). She says the cost to be apportioned for each funding category is estimated to be \$490,000 (roughly a 4% reduction over the prior year) and notes that an estimate of the division of LAFCO costs for the cities and independent special districts is attached to the staff report. She points out that if new reports are issued by the State Controller's office before July 1, the Auditor will adjust these calculations.

Ms. McDonald says the staff recommendation for the proposed Schedule of Fees and Charges is that the Commission: (1) review the preliminary fee schedule and provide staff with direction on changes or amendments to be included; (2) direct staff to forward the Schedule of Fees and Charges to the County, all cities, and all independent special districts for their review and comment pursuant to Government Code Section 66016; and (3) schedule the final review and adoption of the Schedule of Fees and Charges for the May 21, 2003, hearing.

Ms. McDonald says the staff recommendation for the proposed budget is that the Commission: (1) review and adopt the proposed budget for FY 2003-04 and take the actions related to the three policy items listed on page one of the staff report; (2) direct staff to forward the adopted proposed budget to the County and all the cities and independent special districts for their comment pursuant to Government Code Section 56381; and (3) schedule a public hearing for May 21, 2003, for the formal adoption of the final budget for FY 2003-04.

Commissioner Colven says some of the fees seem inadequate and asks whether, given the increased workload, staff has looked into a small percentage increase in the fees. Ms. McDonald responds that many of the fees identified are considered deposits, with the direct costs billed to the applicants. She says they have not looked at direct costs for staff work because every entity is now required to help fund LAFCO. Commissioner Colven asks whether she really feels that the fees are adequate given the continued rise in the workload. Ms. McDonald responds that she feels the fees are adequate. Chairman Smith points out that last year \$8,500 was budgeted for postage and that \$9,100 was spent. He asks why only \$8,500 is budgeted for this coming fiscal year. Ms. McDonald explains that there probably will not be the magnitude of mailings that there was last year. She says, however, that at the mid-year view of the budget, revenues or appropriations could be shifted, if necessary. Commissioner Sedano asks Ms. McDonald if she really feels comfortable with the reduction in the budget. Ms. McDonald says that she is. She points out that last year, the Commission had major purchases in replacing the office computer network system, which are not required this year. She also notes that there are funds set aside in a reserve account.

Commissioner Hertzmann comments that it bothers him that the fees are being spread across all the agencies. He says he is used to more of a "them that want, pay" type of thing. Regarding the \$25 fee proposed in the Fee Schedule, he asks whether it is even worth making that change. Ms. McDonald

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explains that reflects a charge directly to the Commission by the Clerk of the Board for the filing of a Notice of Exemption. Commissioner Hertzmann comments that he wants to understand the process better. He discusses that he would have set up the fees in a different way. Ms. McDonald explains that State law requires that the costs of the Commission be spread to the agencies that sit on the Commission. Commissioner Hertzmann comments that the staff report indicated that the costs to be spread among the agencies are based on revenues for fiscal year 1998-99 and he asks whether that is the latest data available. Ms. McDonald responds that as of today, that is the latest State Controller's report available for cities and special districts. She says that last year, a new report came out in mid-June, so there was an adjustment to the calculations immediately prior to the bills being sent out.

Chairman Smith opens the public hearing and asks whether there is anyone present wishing to discuss these items. There is no one and he closes the hearing.

Commissioner Williams moves approval of staff recommendations for both items, seconded by Commissioner Biane. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Postmus, Sedano, Smith, Williams. Noes: None. Abstain: None. Absent: Pearson (Sedano voting in his stead).

(It is noted that Commissioner Postmus leaves the hearing at approximately 10:10 am.)

CONSIDERATION OF LAFCO 2911 - SERVICE REVIEW PURSUANT TO GOVERNMENT CODE SECTION 56430 AND SPHERE OF INFLUENCE REVIEW (REDUCTION) PURSUANT TO GOVERNMENT CODE SECTION 56425 FOR WEST SAN BERNARDINO COUNTY WATER DISTRICT (COYOTE CANYON SPECIFIC PLAN AREA) AND LAFCO 2912 - WEST SAN BERNARDINO COUNTY WATER DISTRICT DETACHMENT (COYOTE CANYON SPECIFIC PLAN AREA) - CONTINUE TO MAY 21, 2003

LAFCO conducts a public hearing to consider a service review and proposed sphere of influence reduction for, and detachment from, the West San Bernardino County Water District (hereinafter referred to as "the District"). Notice of this hearing has been advertised as required by law through publication in The Sun and the Fontana Herald News, newspapers of general circulation in the area, and individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

Acting Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that the applicant for these proposals has requested a continuance of this hearing to allow for the completion of critical studies related to service delivery in the study area. She states that the District and the applicant are working together to complete these studies and she reports that a well has been drilled and that it has water. Ms. McDonald says the staff recommendation is that the Commission continue these proposals to the May 21, 2003 hearing.

Commissioner Sedano asks how the District feels about a continuance. Ms. McDonald reports that the District concurs with a continuance.

Chairman Smith opens the hearing and asks if there is anyone wishing to speak on these items. There is no one and he closes the hearing.

Commissioner Bagley moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven,

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Sedano, Smith, Williams. Noes: None. Abstain: None. Absent: Pearson (Sedano voting in his stead) and Postmus.

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2915; AND (2) LAFCO 2915 - CITY OF SAN BERNARDINO REORGANIZATION TO INCLUDE ANNEXATION NO. 357 (THREE UNINCORPORATED ISLANDS) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider an application submitted by the City of San Bernardino (hereinafter referred to as "the City") for annexation of three islands of unincorporated territory within the City's northeastern sphere of influence. The reorganization area is generally located within the area commonly known as "Mountain Shadows". Islands 1 and 2 each comprise approximately 33 acres and Island 3 comprises approximately 12 acres. Notice of this hearing has been advertised as required by law through publication in The Sun, a newspaper of general circulation in the area, and individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

Acting Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that in the staff's view, this proposal is essentially a ministerial action. She says the Commission can clearly make the required statutory findings listed on page four of the staff report and is, therefore, required by Government Code Section 56375(a) to approve this proposal. She says the only discretionary issue before the Commission is whether it wishes to hold a protest hearing, and she says staff recommends that the protest proceedings be waived, as permitted by Government Code Section 56375.3. She says the reasons for this recommendation are: (1) the Commission has no discretion in this matter if it makes the required statutory findings; and (2) over 2,000 notices were sent to landowners and voters inside and surrounding the island areas and only two protests were received. She says the City Councilman for the area canvassed the neighborhoods on foot and that people have been fully aware of this application from the outset. She says staff does not believe that a protest proceeding, where levels of opposition have no bearing on the Commission's decision, would be appropriate.

Ms. McDonald discusses a concern expressed by the San Bernardino County Fire Department regarding the impacts on funding reductions for County Service Area 38 (CSA 38) in this area. She explains that CSA 38 contracts with the City to provide fire and paramedic services in all twelve of the City's islands. She says County Fire wants assurance that the removal of this funding source will be acknowledged in upcoming contract negotiations. She reports that the City's Fire Chief has assured County Fire that this will be considered as part of those contract negotiations. She says staff does not believe the impact to CSA 38 in this case is overwhelming, as the areas that will remain are much larger and will be considered in the upcoming contract negotiations.

Ms. McDonald states that the findings required by State law and Commission policy are included in the staff report. She points out that one of the recommendations is that the island annexations be approved, with a condition that the City's 8% utility tax not be extended to these areas. Ms. McDonald says the staff recommendation is that the Commission: (1) adopt the Statutory Exemption that has been recommended for this proposal and direct the Clerk to file a Notice of Exemption within five working days with the County Clerk of the Board of Supervisors; (2) approve LAFCO 2915 as island annexations, as defined in Government Code Section 56375.3, and with the condition that the City's 8% utility tax will not be extended to these areas upon annexation; (3) waive the protest proceedings, as permitted by Government Code Section 56375.3; and (4) adopt LAFCO Resolution No. 2769 setting forth the Commission's findings and determinations.

Commissioner Colven inquires whether there is any provision that if a new City Council comes on board, it can invoke the utility tax. Ms. McDonald says that would require an election, according to the City Attorney. Commissioner Sedano says he would like to hear from the Councilman for the area.

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Chairman Smith opens the hearing and asks if there is anyone wishing to speak.

Neil Derry, Fourth Ward Councilman, states that these unincorporated areas around the City are a major issue because of problems related to police and fire service. He reports that he has walked many of the streets in these areas and sent letters to, and received phone calls from, the residents. He says there has been very little concern expressed about annexation; that the residents are already part of the community and are impacted by what the City does. He says annexation will give the residents a good opportunity through future elections to express their views about what the City does. Mr. Derry asks that the Commission support this proposal.

Commissioner Sedano comments that it is very generous of the City Council to waive the utility tax in these areas. Mr. Derry comments that they felt that with Proposition 218, any type of annexation where there was no protest hearing or election would require a vote in order to apply the utility tax. He says that this tax has always been an obstacle to annexations to the City.

Chairman Smith asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Sedano moves approval of staff recommendation, seconded by Commissioner Biane. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Sedano, Smith, Williams. Noes: None. Abstain: None. Absent: Pearson (Sedano voting in his stead) and Postmus.

PENDING LEGISLATION

Ms. McDonald presents the staff report on pending legislation, which includes a copy of the Legislative Report prepared by Orange County LAFCO. She says the report provides an outline of the status of pending legislation of interest to LAFCOs. She calls the Commission's attention to AB 721, which would require city and county general plan land use elements to include urban growth boundaries that establish geographic areas to which those cities and counties intend to extend urban services over the next 20 years. She says she hopes to provide a more in depth report on pending legislation next month.

Ms. McDonald says the Commission has been presented with a copy of an e-mail and background documents from the South Coast Air Quality Management District requesting support for SB 981, co-authored by Senator Nell Soto. She says no action is required today, but says staff will provide additional information if it is requested. Commissioner Williams comments that the bill was to be heard on April 7 by the Environmental Quality Committee and she asks what the results of that hearing were. Ms. McDonald responds that hearing has been postponed to April 21, so no action has been taken yet.

ACTING EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald reports that the adoption of the final budget, a small annexation to the City of Upland along Arrow Rte., the continued Coyote Canyon proposals, and the annexation to the City of Chino of the balance of the Agricultural Preserve will be on the May 21 agenda. She says the various documents related to the environmental review for the City of Chino annexation have been presented to the Commissioners this morning. She reports that the Notice of Determination on the City's Environmental Impact Report was filed on March 28 and says the City is waiting to find out if litigation will be filed. She says if litigation is filed, the Commission will need to determine at the May hearing whether it will proceed with the annexation or await completion of the litigation pursuant to its policy. She says a document has been presented to the

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Commission which was received from The Planning Center providing its position on various legislation passed last year.

COMMENTS FROM THE PUBLIC

Chairman Smith calls for comments from the public. There are none.

Legal Counsel Clark Alsop reports that the Commission met in Closed Session before this morning's public session to discuss the matter on the agenda--Employee Evaluation--Acting Executive Officer. He says no reportable action was taken.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 10:25 A.M.**

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

GERALD W. SMITH, Chairman